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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 PATRICIA LOPEZ,

8 Plaintiff,

9 v.

10 CARDENAS MARKETS, INC.,

11 Defendant.
12

Case No. 2:17-cv-00985-RFB-PAL

ORDER

13 **I. INTRODUCTION**

14 Before the Court is Defendant's Motion for Summary Judgment re Breach (ECF No. 15)
15 and Defendant's Motion for Summary Judgment re Damages (ECF No. 16).
16

17 **II. FACTUAL BACKGROUND**

18 **A. Undisputed Facts**

19 The Court finds the following facts to be undisputed.

20 On June 14, 2015, Plaintiff Patricia Lopez slipped and fell while shopping for groceries at
21 Cardenas. Video footage of the incident establishes the following timeline. At 11:59:54, a
22 customer's child dropped a bottle near the meat department, creating a spill. At 12:00:12, a
23 customer walked through the area and did not fall. At 12:00:30, a second customer walked through
24 the area and did not fall. At 12:01:04, Cardenas employee Cruz Olmos walked through the area
25 and did not fall or notice the spill. Four more customers walked through the area between 12:01:13
26 and 12:01:16 and did not fall. Plaintiff walked through the area at 12:01:20 and fell. At 12:01:45,
27 Mr. Olmos placed a yellow caution cone in the area. By 12:02:24, Mr. Olmos had obtained a roll
28 of paper towels and was cleaning the spill.

1 **B. Disputed Facts**

2 The parties dispute whether Mr. Olmos should have noticed the spill when he walked
3 through the area at 12:01:04 and how apparent the spill was.
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5 **III. PROCEDURAL BACKGROUND**

6 Plaintiff filed her initial complaint in state court on September 9, 2016. ECF No. 1.
7 Defendant petitioned for removal on April 6, 2017. ECF No. 1. On November 7, 2017, Defendant
8 filed two Motions for Summary Judgment, arguing that Plaintiff can show no genuine dispute as
9 to (1) breach of duty and (2) causation of damages.
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11 **IV. LEGAL STANDARD**

12 Summary judgment is appropriate when the pleadings, depositions, answers to
13 interrogatories, and admissions on file, together with the affidavits, show “that there is no genuine
14 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
15 Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When considering the
16 propriety of summary judgment, the court views all facts and draws all inferences in the light most
17 favorable to the nonmoving party. *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir.
18 2014). If the movant has carried its burden, the non-moving party “must do more than simply
19 show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as
20 a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
21 issue for trial.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (citation and internal quotation marks
22 omitted) (alteration in original).
23

24 **V. DISCUSSION**

25 **a. Breach of Duty**

26 Under Nevada law, a plaintiff must prove four elements to show negligence in a slip-and-
27 fall matter: (1) the defendant owed a duty to the plaintiff to exercise due care; (2) the defendant
28 breached the duty; (3) the breach was the actual and the proximate cause of the plaintiff’s injury;

1 and (4) the plaintiff was damaged. Joynt v. California Hotel & Casino, 835 P.2d 799, 801 (Nev.
2 1992). “[A] business owner owes its patrons a duty to keep the premises in a reasonably safe
3 condition for use.” Sprague v. Lucky Stores, Inc., 849 P.2d 320, 322 (Nev. 1993). A business
4 owner will be liable for breaching its duty to patrons if the business owner, or his or her agents,
5 cause a foreign substance to spill on the floor. Id. But if any other person causes the foreign
6 substance to spill on the floor, the business can only be liable if it had actual or constructive notice
7 of the foreign substance and did not remedy it. Id. at 322–23.

8 “[Q]uestions of negligence and proximate cause are generally questions of fact” that
9 become questions of law “only when the evidence will support no other inference.” Joynt, 835
10 P.2d at 801 (citation omitted). Thus, “courts are reluctant to grant summary judgment in
11 negligence cases because foreseeability, duty, proximate cause, and reasonableness usually are
12 questions of fact for the jury.” Lee v. GNLV Corp., 22 P.3d 209, 212 (Nev. 2001) (citation
13 omitted).

14 A genuine dispute remains in this case as to whether Defendant had constructive
15 knowledge of the spill. It is undisputed that Mr. Olmos walked through the area of the spill 16
16 seconds before Plaintiff walked through the area, slipped, and fell. It is further undisputed that
17 Mr. Olmos neither caused nor actually noticed the spill. A jury must decide whether Mr. Olmos
18 should have seen the spill or whether it was reasonable for him not to notice it. The Court therefore
19 denies summary judgment on this ground.

20 **b. Causation of Damages**

21 Under Federal Rule of Civil Procedure 26(a), a party must provide timely notice of the
22 identity of any witnesses it may use at trial. For witnesses who are not required to provide a written
23 report, the party must additionally disclose “(i) the subject matter on which the witness is expected
24 to present evidence under Federal Rule of Evidence 702, 703, or 705; and (ii) a summary of the
25 facts and opinions to which the witness is expected to testify.” Fed. R. Civ. P. 26(a)(2)(C).

26 Defendant argues that Plaintiff’s timely notice identifying four witnesses was insufficiently
27 detailed to meet the requirements under the Federal Rules and that without this expert testimony,
28 Plaintiff can raise no evidence of causation of damages. The Court finds that Plaintiff’s disclosures

1 in this case provided adequate notice under Rule 26. The Court therefore denies summary
2 judgment on this ground but would entertain a motion by Defendant requesting that Plaintiff
3 provide a more comprehensive disclosure prior to trial.

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5 **IV. CONCLUSION**

6 **IT IS ORDERED** that Defendant's Motion for Summary Judgment re Breach (ECF No.
7 15) and Defendant's Motion for Summary Judgment re Damages (ECF No. 16) are **DENIED**.

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9 DATED: September 24, 2018.

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12 **RICHARD F. BOULWARE, II**
13 **UNITED STATES DISTRICT JUDGE**
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